



Labour Tribunal
CAYMAN ISLANDS GOVERNMENT

Department of Labour & Pensions
2nd Floor, Mid Town Plaza, Elgin Avenue
P.O. Box 2182 George Town
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LABOUR TRIBUNAL		
<i>Extraordinary Gazette No. 98/2022</i>		
Chairpersons	Deputy Chairpersons	Members
Robert Jones (Resigned) Gregery Barnes Jennodell Myles Samantha Bennett	None	Davina Ebenis Vaccianna Franklin Shelly-Ann Davis
LABOUR TRIBUNAL		
<i>Extraordinary No. 14/2023</i>		
Chairpersons	Deputy Chairpersons	Members
Donnette Goddard	Michelle Coleman Cashema Clarke Angelita Edwards Vincent Frederick Nadine McBean	Nansie Cover Pamela Duncan Jaron Leslie Harwell McCoy Petrina Moore

Matter: Ref 220632
Date of Hearing: 4 April 2023
Location: Via Virtual meeting platform Zoom

Labour Tribunal Panel

Chairperson: Samantha Bennett
Deputy/Member: Angelita Edwards
Member: [Click here to enter text](#)

Labour Tribunal Secretary: Kara Connor

Employee/Complainant: [REDACTED]

Employer/Respondent: [REDACTED]

Observers: N/A

Page 1 of 6



Labour Tribunal

CAYMAN ISLANDS GOVERNMENT

29 May, 2023

Via Email

Via Email

The enclosed ruling of the Labour Tribunal, resulting from the proceedings of 4 April, 2023, in the matter of [REDACTED], is provided in accordance with section 75 of the Labour Act

Decision

The Tribunal Chairperson finds that [REDACTED] was unfairly dismissed from his employment with [REDACTED] and should be paid accordingly in Law for unfair dismissal and severance pay

Orders/Awards

The Tribunal orders [REDACTED] to pay [REDACTED] for Unfair Dismissal in accordance with section 55 of the Labour Act in the amount of one week's salary for every year worked since February 2009 to December, 2011 (11 years) In accordance with Section 41(2) of the Labour Act regarding computation of severance pay, [REDACTED] should be paid one week's salary for every year employed with the company

Right to Appeal

Any person aggrieved by this Tribunal Decision, by virtue of the Labour Act may within fourteen (14) days of the date of this letter of notification, appeal this Decision. The appeal application must be made in writing and addressed to the Chairman of the Labour Appeals Tribunal. The appeal application should provide the reasons why you assert that the Tribunal has made an error of fact or Law.

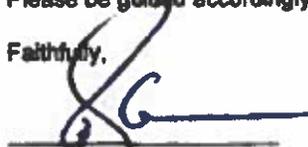
Should an appeal not be filed within the prescribed timeframe, full payment of the award will become due within fourteen (14) days of the date of this letter.

Please direct appeals to:

Secretary to The Labour Appeals Tribunal
2nd Floor Mid Town Plaza
Elgin Avenue, George Town
Grand Cayman KY1-9000
Cayman Islands
Tel: (345) 945-8980
Email: lab@go.ky Alternative Email: labourtibunal@go.ky

Please be guided accordingly

Faithfully,


Kara Connor
Labour Tribunal Secretary

2nd Floor, Mid Town Plaza, Elgin Avenue, P.O. Box 2182 George Town
George Town, Grand Cayman KY1 1105

Direct Ext (345) 244 4015 Direct Email: kara.connor@go.ky Labour Tribunal General Email: labourtibunal@go.ky

Introduction

1. This is the Decision and Order of the Labour Tribunal ("the Tribunal") in respect of the hearing of a Complaint ("the Complaint") filed by [REDACTED] ("the Complainant" or "I") against [REDACTED] former employer, [REDACTED] (or "the Employer" or "the Respondent"). The Complaint was heard by the Tribunal on the 4/4/2023, commencing at 10:00am in the Large Conference Room of the Department of Labour and Pensions, Midtown Plaza, Elgin Avenue, Grand Cayman. [REDACTED] was represented by [REDACTED] attorney [REDACTED]. [REDACTED] was represented by attorney [REDACTED].
2. The complaint was filed in this matter by the Complainant on 21st December 2021 and the Tribunal has reviewed and carefully considered the complaint and reviewed and carefully considered the verbal and written representation made by the Employer. In reaching this decision the Tribunal has also reviewed and considered the sworn evidence of the Complainant who was absent from the Tribunal.
3. On the day of the Tribunal of April 4th 2023 at 8:15am, Attorney [REDACTED] for [REDACTED] sent further documentation to the Secretary for the Tribunal for consideration. It is unknown to the Tribunal if this information was shared with the Complainant and [REDACTED] legal counsel.

Background

On December 21, 2021, [REDACTED] filed a complaint with the Department of Labour and Pensions (DLP) alleging that [REDACTED] was unfairly dismissed from [REDACTED] post on December 15, 2021 as a [REDACTED] with [REDACTED].

In the termination letter to [REDACTED] it is stated by the company [REDACTED] that [REDACTED] verbally threatened [REDACTED] supervisor [REDACTED] on several occasions consequently calling her a derogatory name in which [REDACTED] also spoke to several other staff about [REDACTED]. In addition, [REDACTED] stated in the letter that [REDACTED] had received numerous warnings both verbally and in writing regarding [REDACTED] non-performance of duties. The company dismissed [REDACTED] in accordance with 52 (1) (a) of the Labour Act (2021 Revision).

[REDACTED] states [REDACTED] employment was terminated without warning and [REDACTED] is now claiming unfair dismissal and severance Pay.

Summary of Evidence

In explaining his comments made to [REDACTED] supervisor, [REDACTED] expressed that [REDACTED] had no intention of threatening or disrespecting [REDACTED] supervisor and that [REDACTED] verbal expressions have been misunderstood. However, [REDACTED] stated that [REDACTED] clarified for [REDACTED] on several occasions that the last supervisor who behaved in the same disrespectful manner towards [REDACTED] was fired and had to leave the island. Consequently because of these disputes, [REDACTED] claimed [REDACTED] continued to be disrespectful to [REDACTED] which [REDACTED] complained on several occasions to the HR Manager in person and via text messages. The Tribunal noted that no evidence was provided in this regard from either party of testimony from the HR Manager confirming receipt of the complaints.

[REDACTED] rejects the hearsay evidence that has been provided in support of the allegations of [REDACTED] threatening [REDACTED] supervisor and also rejects that any verbal or written warning had ever been provided to [REDACTED] with regard to [REDACTED] not performing [REDACTED] duties.

[REDACTED] provided written complaints and warnings regarding [REDACTED] work performance dating as far back as 2010 to 2016, where it was noted by the Tribunal that nothing was documented on file within the last twelve months of [REDACTED] termination. Furthermore no evidence was provided of any conversation as a verbal warning or a written warning of

recent times regarding [redacted] work performance. It was also noted that at no time was [redacted] written to by [redacted] about threatening [redacted] Manager or the concerned conversations [redacted] had had with [redacted]

[redacted] provided a signed statement only after the termination from [redacted] - Chief Operating Officer which stated that [redacted] investigated serious allegations against [redacted] where [redacted] met and spoke with a number of team members to obtain feedback on the events that transpired. This consisted of three members of staff in which they stated their opinion on how [redacted] spoke to [redacted] supervisor. It was noted by the Tribunal, that the COO did not seek the same feedback from [redacted] separately or allow for [redacted] to provide a response to the allegations.

[redacted] confirmed that a disciplinary meeting was held with [redacted] on December 14, 2021 in which the matters of concern with [redacted] supervisor were then discussed. [redacted] confirmed that at no time prior to this meeting was he provided the detail of encounters with [redacted] supervisor or details of responses from other employees on [redacted] behavior or details of [redacted] non-performance of work. However, [redacted] was provided at this meeting with an ultimatum that if [redacted] was to "apologize to [redacted] supervisor [redacted] - this would save [redacted] job. [redacted] expressed that [redacted] did "not know" what [redacted] was apologizing for and consequently because no apology was made, [redacted] was terminated from employment the next day.

The Law

Dismissal for good cause

51. (1) Subject to subsections (2) and (3), a dismissal shall not be unfair if the reason assigned by the employer for it is --

- (a) misconduct of the employee within section 52(1);
- (b) that it is under section 52(3), namely misconduct following the receipt of a written warning;
- (c) that it is under section 53(2), namely failure of the employee to perform that person's duties in a satisfactory manner following the receipt of a written warning;
- (d) that the employee was redundant;
- (e) that the employee could not continue to work in the position that person held without contravention (on that person's or on the employer's part) of a requirement of this or any other law; or
- (f) some other substantial reason of a kind which would entitle a reasonable employer to dismiss an employee holding the position which the employee held, and under the circumstances the employer acted reasonably.

(2) Where the reason for the dismissal of an employee was that that person was redundant but it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking, who were employed to perform work of the kind that person was employed to do and who have not been dismissed by the employer, and

(a) that those other employees do not hold the same status as the redundant employee for the purposes of Parts III to V of the repealed Immigration Law (2015 Revision) (Caymanian status, permanent residence and work permits); and

(b) that the redundant employee was selected for dismissal in contravention of a customary arrangement or agreed procedure relating to redundancy and there were no special reasons justifying a departure from that arrangement or procedure in that person's case, then, for the purposes of this Part, the dismissal shall be regarded as unfair.

(3) The question whether an employer has acted reasonably for the purposes of this Part shall be determined in accordance with equity and the substantial merits of the case having regard to all the circumstances.

Termination for misconduct

52. (1) An employer may terminate forthwith the employment of an employee where the employee has been guilty of misconduct in or in relation to that person's employment so serious that the employer cannot reasonably be expected to take any course other than termination. Such misconduct includes, but is not limited to situations in which the employee has —

- (a) conducted themselves in such a manner as clearly to demonstrate that the employment relationship cannot reasonably be expected to continue;
- (b) committed a criminal offence in the course of employment without the consent, express or implied, of the employer;
- (c) behaved immorally in the course of that person's duties; or
- (d) is under the influence of a controlled drug (other than one lawfully prescribed by a health practitioner) or alcohol during the hours of that person's employment.

(2) Where an employee commits misconduct in or in relation to that person's employment that is not sufficiently serious to justify that person's employer terminating that person's employment under subsection (1) but is such that the employer cannot reasonably be expected to tolerate a repetition, the employer may give the employee a written warning which shall describe the misconduct in respect of which the warning is given and state the action the employer intends to take in the event of any further misconduct.

(3) Where an employee has been given a written warning under subsection (2), if that person, within twelve months following the receipt of the written warning, commits misconduct of any kind in relation to that person's work, the employer may terminate the employment of the employee, or take such other action as may have been specified in the written warning, without further notice.

(4) For the avoidance of doubt, misconduct includes, but is not limited to, absenteeism.

Termination for failure to perform duties in satisfactory manner

53. (1) Where an employee is no longer performing that person's duties in a satisfactory manner, the employer may give the employee a written warning which shall describe in what manner that person's performance is unsatisfactory and state the action the employer intends to take in the event of continuance.

(2) Where an employee has been given a written warning under subsection (1), if that person does not, during the period of one month following the receipt of the written warning, commence performing that person's duties in a satisfactory manner, the employer may terminate that person's employment at the end of that one month period, or after the end of that period take such other action as may have been specified in the written warning without further notice.

The Tribunal's Findings

It was noted by the Tribunal that no written warnings were on file since 2016 regarding [redacted] and [redacted] work performance. [redacted] did not outline any specific details about [redacted] non-performing of [redacted] duties other than a reference to what was on file some 5 years prior. [redacted] could have written to [redacted] outlining [redacted] nonperformance of duties, explain what was expected of [redacted] and be given an opportunity and a period of time to improve otherwise [redacted] needed to understand the consequences of non compliance of this which included dismissal of employment. Forewarning of the penalties of actions or of non-performance are key steps to managing employees.

When in early November, the incidents and encounters with [redacted] and [redacted] supervisor occurred of threatening behavior towards [redacted] supervisor, why were the matters not addressed immediately if they were considered of such a serious nature (grounds for immediate dismissal). Termination did not occur until several weeks later.

██████████ stated he brought his concerns to the attention of the HR Manager and at no time a mediation and or meeting was held to handle the complaints of both the complainant or even the supervisor. Unfortunately the discussions held between employee and supervisor were not addressed until a disciplinary meeting was held a month later in which ██████████ was asked without notice to apologize for ██████████ actions.

The allowance to provide for an "apology" showed that the Employer was willing to work with the two individuals on a mediation and reconciliation process of moving the working relationship forward – on the one sided belief that ██████████ had acted inappropriately. However ██████████ claimed ██████████ could not apologize for something ██████████ did not "do or say" at this meeting. It was then decided on the following day by ██████████ that ██████████ would be terminated by reason of gross misconduct Section 52 (1) a of the Labour Act (2021 revision).

When considering the principles of natural justice, a person should receive a fair and unbiased hearing before a decision is made that will negatively affect them. The three main requirements of natural justice that must be met in every case are: adequate notice, fair hearing and no biases. Most importantly a person should be informed of the allegations against them and be given an opportunity to answer those allegations in an adequate time frame and setting and not be subject be given an ultimatum without notice.

The Tribunal has to take into account the relevant considerations of this case along with the extenuating circumstances and disregarded the irrelevant evidence provided. ██████████ had no current warnings on file regarding ██████████ work performance. ██████████ was not provided by ██████████ with the detail threatening encounters with ██████████ supervisor to respond to before ██████████ dismissal in order that ██████████ could respond/explain/rebut as this was not provided by the company ██████████ dated 31st January 2022) until a month after ██████████ termination.

Decision

The Tribunal Chairman finds that ██████████ was unfairly dismissed from ██████████ employment with ██████████ and should be paid accordingly in Law for Unfair dismissal and severance pay.

Orders/Awards

The Tribunal orders ██████████ to pay ██████████ for Unfair Dismissal in accordance with section 55 of the Labour Act in the amount of one weeks salary for every year worked since February 2009 to December 2021 (11 weeks). In accordance with section 41 (2) of the Labour Act regarding computation of severance pay, ██████████ should be paid one weeks salary for every year employed by the company.

Right to Appeal

The Tribunal's decision, enforcement and appeals are governed by section 75 to 78 of the Labour Law.

Section 78(1)

Any person aggrieved by:

- (a) any decision of a Labour Tribunal upon a complaint where the award exceeds five hundred dollars;
- (b) the service of a remedial notice;
- (c) any decision of a Labour Tribunal that his dismissal was fair;
- (d) any refusal of a Labour Tribunal to register an overtime agreement; or
- (e) any decision of a Labour Tribunal that no award should be made,

Page 5 of 6


may, within (14) fourteen days of notification of the decision or service of the notice, appeal to the Appeals Tribunal:

Provided that an employee may appeal an award of less than five hundred dollars where he claims that the award have exceeded five hundred dollars.

(2) An appeal under subsection (1) is brought by giving notice in writing to the chairman of the Appeals Tribunal.

(3) The giving of a notice of appeal pursuant to subsection (2) operates as a stay upon any award made by a Labour Tribunal.

(4) The notice of appeal under subsection (2) shall also be served upon a Labour Tribunal and in the case of an appeal from a decision of a Labour Tribunal upon a complaint, upon all persons who were invited to appear before a Labour Tribunal under section 75(6).

(5) Upon receipt of a notice the Chairman of the Tribunal shall fix a date for the hearing of the appeal, being not less than one month nor more than three months from the date of his receipt of the notice of appeal, and shall give notice of that date forthwith to the appellant and to all parties who were entitled to receive the notice of appeal pursuant to subsection (4).

(6) All persons entitled to receive the notice of appeal pursuant to subsection (4) shall be entitled to appear at and be heard upon the hearing of the appeal, or upon any adjourned hearing.



Chairperson
25-May-28

